

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff

DECISION and ORDER

-VS-

13-CR-6012

ALBERTO ALFARO

Defendant

Siragusa, J. This case was referred by text order of the undersigned, entered on January 16, 2013, to Magistrate Judge Jonathan W. Feldman pursuant to 28 U.S.C. § 636(b)(1)(A)-(B), ECF No. 35. On September 5, 2013 Defendant filed an omnibus motion, ECF No. 102, seeking *inter alia* suppression of the result of an identification procedure used by law enforcement on February 3, 2012. That procedure involved Defendant's identification by a confidential informant from a photo array. On October 28, 2013, Judge Feldman conducted a suppression hearing to determine the admissibility of the identification procedure. At the conclusion of the hearing, Judge Feldman issued an oral Report and Recommendation ("R&R") recommending that Defendant's motion to suppress the identification be denied. Thereafter on that same day, October 28, 2013, Magistrate Judge Feldman filed a written R&R, ECF No. 117, confirming his oral determination. Defendant timely filed objections to the R&R on November 12, 2013, ECF No. 120, arguing that the photo array, utilized by law enforcement on February 3, 2012 from which the confidential made the identification, was unduly suggestive.

As to Defendant's objections to Judge Feldman's findings and recommendation on his motion to suppress the identification procedure, pursuant to 28 U.S.C. § 636(b)(1), this

Court must make a *de novo* determination of those portions of the R&R to which objections have been made. Upon a *de novo* review of the R&R, including a review of the transcript of the suppression hearing held on October 28, 2013 and the photo array at issue, as well as Defendant's objections, Court accepts the proposed findings and recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Feldman's R & R, ECF No. 117, in which he confirmed his oral determination of October 28, 2013, Defendant's application to suppress the February 3, 2012 identification procedure is denied.

IT IS SO ORDERED.

Dated: Rochester, New York
December 3, 2013

ENTER:

/s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge